IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

BILLY BUDD SULLIVAN,	)	CV 11–131–M–DWM–JCL
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
DAVID ORTLEY, Justice of the Peace;	)	
TED LYMPUS, District Court Judge;	)	
SUPREME COURT JUDGE;	)	
FLATHEAD JUSTICE & DISTRICT	)	
COURTS;	)	
SUPREME COURT OF MONTANA; and	)	
STATE OF MONTANA	)	
	)	
Defendants.	)	

Plaintiff Billy Budd Sullivan, proceeding pro se, filed a motion to proceed

in forma pauperis and a proposed Complaint. (Dkt ## 1, 2). Mr. Sullivan alleges

various injustices that occurred during the course of unspecified legal proceedings

in the courts of the State of Montana. See Compl. 5–6. (dkt # 2).

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The matter was referred to Magistrate Judge Lynch under 28 U.S.C. § 636(b). Judge Lynch granted Mr. Sullivan's motion to proceed *in forma pauperis* and issued his Findings and Recommendation on October 13, 2011. (Dkt # 4). Since Mr. Sullivan is proceeding *in forma pauperis*, his Complaint is subject to screening under 28 U.S.C. §§ 1915, 1915A. Those two sections allow a court to dismiss a complaint, or any portion of the complaint, before it is served on a defendant if it is "frivolous," "fails to state a claim for which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id.

Judge Lynch recommended that Mr. Sullivan's complaint be dismissed. Findings & Recommendation 3–9 (Dkt # 4). Mr. Sullivan timely objected to Judge Lynch's Findings and Recommendation. (Dkt # 6). He is therefore entitled to de novo review of the specified findings or recommendations to which he objects. 28 U.S.C. § 636(b)(1). The Court reviews portions of the Findings and Recommendation not specifically objected to for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981).

Since the parties are familiar with the facts of this case, they are restated here only as necessary to explain the Court's decision.

The Court agrees with Judge Lynch's analysis and recommendation. First, Justice of the Peace David Ortley and Judge Ted Lympus are judges in the state

courts of Montana and are therefore entitled to judicial immunity for their judicial acts. See Simmons v. Sacramento Co. Super. Ct., 318 F.3d 1156, 1161 (9th Cir. 2003); Mishler v. Clift, 191 F.3d 998, 1006 (9th Cir. 1999) ("'A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.'" (quoting Stump v. Sparkman, 435 U.S. 349, 359 (1978)). Since all of Mr. Sullivan's claims against Justice of the Peace Ortley and Judge Lympus are based on their judicial acts, they are entitled to judicial immunity.

Second, the remaining defendants—i.e., Flathead Justice & District Courts, the Supreme Court of Montana, and the State of Montana—are entitled to sovereign immunity under the Eleventh Amendment to the United States Constitution. Absent a waiver of sovereign immunity, neither a state, nor "arms of the state," may be sued in federal court. Johnson v. Rancho Santiago Community College Dist., 623 F.3d 1011, 1021 n.4 (9th Cir. 2010). "A state waives its Eleventh Amendment immunity if it unequivocally evidences its intention to subject itself to the jurisdiction over the federal court." Id. at 1021 (citations, alterations, and internal quotation marks omitted). Here, the remaining defendants are arms of the state, and they have not waived their sovereign immunity. Thus, Mr. Sullivan's claims against these defendants fail.
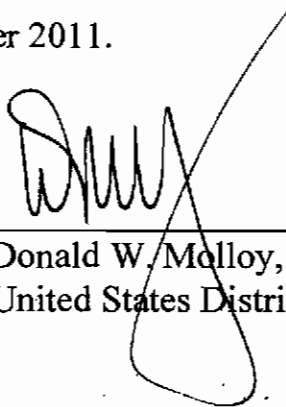
The Court dismisses Mr. Sullivan's complaint because he has failed to state

a claim for which relief may be granted. 28 U.S.C. § 1915A(b)(1).

The Court finds no clear error in the portions of Judge Lynch's Findings and Recommendation to which Mr. Sullivan did not object.

Accordingly, IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt # 4) is adopted in full. Plaintiff Billy Budd Sullivan's complaint is DISMISSED.

DATED this _____ day of October 2011.

Donald W. Molloy, District Judge
United States District Court